Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2295 OF 2012

DILIPSINGH NARAYANRAO BORAWAKE,
Age: 65 years; Occupation: business,
Residing at: "Sukhunandan", 759/37,
Deccan Gymkhana, Bhandarkar Road,
Pune – 411 004 ... **PETITIONER**

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
(Notice may be served to The Secretary, Urban Development Department of the State of Maharashtra);

2. **PUNE MUNICIPAL CORPORATION**, Shivajinagar, Pune
(Notice may be served To the Commissioner, Pune Municipal Corporation, Pune);

3. **THE CITY ENGINEER,**
Pune Municipal Corporation,
Shivajinagar, Pune. ... **RESPONDENTS**

FOR THE PETITIONER	**Mr Nachiket V Khaladkar.**
FOR RESPONDENT NO 1	**Mr NK Rajpurohit**, *AGP.*
FOR RESPONDENTS NOS. 2 AND 3	**Mr RM Pethe.**

CORAM : S. C. Dharmadhikari & G.S.Patel, JJ.

RESERVED ON : 17th June 2019

PRONOUNCED ON : 5th July 2019

JUDGMENT: (*Per GS Patel, J*)

1. Just to the south of Koregaon Park in Pune lies the area known as Ghorpadi. Although within Municipal Corporation limits, the lands in Ghorpadi were originally in the agricultural zone. The Petitioner owns land of about 5H 11 R and 3H 3.356R, respectively bearing new Survey Nos. 62/1 and 63/1.

2. On 27th June 2000, the Maharashtra Government through the Secretary, Urban Development issued a notification declaring its decision to include certain lands, including the lands in Ghorpadi, all of which were then zoned as agricultural, in the residential zone. This inclusion was conditional. It is this notification of 27th June 2000, and more particularly Condition 3 of that notification that is impugned in this Writ Petition under Article 226 of the Constitution of India. The writ petition was filed in 2012, twelve

years after the notification of 2000. A copy of the notification is annexed as Exhibit "A" from pages 16 to 20 of the Petition. Condition 3 says (this is our translation from the Marathi original) that if any portion of this land in the notification of two hectares or more is proposed to be developed, 10% of the land would have to be surrendered to the 2nd Respondent, the Pune Municipal Corporation, as amenity space without compensation in cash, but the owner so surrendering the amenity space land would be entitled to claim FSI benefit. Plainly read, the condition does not mandate a compulsory surrender of the land delinked from a proposed development, nor does it eliminate all forms of compensation. It specifically mandates such a surrender, and of a defined percentage, only if development is proposed, and it is bundled with an entitlement to claim FSI benefits against and in lieu of such a surrender.

3. The Petitioner says that he decided to amalgamate new Survey No. 62/1 and Survey No. 63/1. He submitted an amalgamation plan to the 2nd Respondent-Corporation. He

obtained sanction on 26th March 2007. After amalgamation, the combined land was subdivided into 10 plots. In this layout the plot marked as Plot No.10 was specifically earmarked for this 10% amenity space.

4. According to the Petitioner, some internal roads in this layout were on 30th September 2002 declared as public roads for public use. There was also a reservation on both Survey Nos. 62/1 and 63/1 for a garden of 4102.24 sq mtrs from Survey No. 62/1 plus 1497.76 sq mtrs from Survey No. 63/1. The Petitioner claims that he surrendered the total land covered by the garden and by the DP roads respectively, i.e. 5600 sq mtrs towards the garden reservation and 1021.97 sq mtrs on account of the DP roads, to the 2nd Respondent-Corporation and obtained a possession receipt. Since 11th August 2005 possession of these surrendered portions has been with the 2nd Respondent-Corporation. The Petitioner himself agrees and accepts that in lieu of this surrender, the Petitioner sought, was granted and obtained transferable development rights or

TDR. He further says that an additional 10,076.30 sq mtrs is categorised as green belt and is non-buildable.

5. Intending to develop the remaining land, the Petitioner submitted a proposal. However, on 29th January 2008, the 2nd Respondent-Corporation rejected this application saying that the proposed development on Plot No.10 could not be permitted as this was reserved for the 10% amenity space. The Petitioner argued that he had already surrendered lands for garden and public purposes and therefore it was not appropriate to earmark Plot No.10 for an amenity space or a public purpose, or to persist with that condition or reservation. He also pointed out that even obtaining the FSI in lieu thereof would be of no use since he could not consume that FSI anywhere else.

6. Against this rejection, the Petitioner filed an Appeal on 29th January 2008 to the Hon'ble Chief Minister under Section 47 of the Maharashtra Town Regional Planning Act 1966 ("**MRTP Act**"). After hearing both sides, the Hon'ble Chief Minister passed an order on 5th April 2010 dismissing the Appeal. A copy of that order

is annexed at Exhibit "H" at pages 45 to 46 of the Appeal paper-book.

7. By this Writ Petition, therefore, the Petitioner seeks our intervention to not only set aside and quash the order of Chief Minister but also Condition No. 3 of the original notification of 27th June 2000.

8. Mr Khaladkar on behalf of the Petitioner makes three fundamental submissions. First, he says that having already surrendered the land for the garden and the public roads, it is arbitrary and unfair to demand a further surrender from the Petitioner. Second, it is contended that this condition amounts to a forcible acquisition without compensation because the offer of FSI in lieu of the surrender is illusory since it can not be used at all within the existing development norms. Third, it is argued that the reservation for 10% amenity space is 'unnecessary' and that there is more than enough amenity space.

9. Having heard Mr Khaladkar for the Petitioner and having considered his submissions, we are not persuaded that there is a slightest merit in this Petition. The entire Petition and the arguments advanced overlook the statutory intent and purpose of the MRTP Act. We will first notice a few relevant provisions of this Act especially those in relation to development plans before turning to the authorities cited before us.

10. The purpose of the Act is to make provision for planning the development and use of land in regions established for that purpose; for the constitution of regional planning boards; to make better provisions for preparation of development plans with a view to ensuring that Town Planning Schemes are made in a proper manner and their execution is effective; to provide for the creation of new towns; to make the provisions for the compulsory acquisition of land for public purposes in respect of plans; and for connected matters.

11. A few definitions may be noticed in Section 2 of the MRTP Act.

2(2) "***Amenity***" means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences;

2(7) "***Development***" with its grammatical variations means the carrying out of buildings, engineering, mining or other operations in or over or under, land or the making of any material change, in any building or land or in the use of any building or land or any material or structural change in any heritage building or its precinct and includes demolition of any existing building structure or erection or part of such building, structure of erection; and reclamation, redevelopment and lay-out and sub-division of any land; and "to develop" shall be construed accordingly;

2(9) "***Development Plan***" means a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a special planning Authority for development of land within its jurisdictions;

2(9A) "***Development Rights***" means right to carry out development or to develop the land or building or both and shall include the transferable development right in the form of right to utilise the Floor Space Index of land utilisable either on the remainder of the land partially reserved for a public purpose or elsewhere, as the final Development Control Regulations in this behalf provide;

2(12) "***Existing-land-use map***" means a map indicating the use to which lands in any specified area are put at the time of preparing the map;

> 2(14) "***Land***" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;
>
> 2(21) "***Plot***" means portion of land held in one ownership and numbered and shown as one plot in a town planning scheme;

12. Chapter III deals with development plans. Section 21 sets out the provisions regarding the preparation of plans. Section 22 deals with the contents of the development plans and reads thus:

> **22. Contents of Development Plan**
>
> A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,—
>
> (a) Proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational;
>
> (b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious building and government and other public buildings as may from time to time be approved by the State Government;

(c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;

(d) transport and communications, such as roads, high-ways, park-ways, railways, waterways, canals and air ports, including their extension and development;

(e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;

(f) reservation of land for community facilities and services;

(g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;

(h) preservation, conservation and development of areas of natural scenery and landscape;

(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value and of heritage buildings and heritage precincts;

(j) proposals for flood control and prevention of river pollution;

(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to requisition for public purpose or as specified in Development plan, having regard to the provisions of section 14 or

for development or for securing use of the land in the manner provided by or under this Act;

(l) the filling up or reclamation of low lying, swampy or unhealthy areas, or levelling up of land;

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of fees, charges and premium, at such rate as may be fixed by the State Government or the planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and hoardings and other matters as may be considered necessary for carrying out the objects of this Act.

Section 22 is clearly inclusive, not exhaustive. Sub clauses (a), (c), (e) and (f) are important. Sub clause (e) specifically speaks of amenities being included as part of the contents of the development

plan. The word 'amenity', as we have seen, is defined, and that definition is sweeping in its ambit. It is an inclusive definition: roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences are all covered by the definition of 'amenity'.

13. Then there are provisions within Chapter III for modifications, revisions, sanctioning of draft development plans and so on.

14. Chapter IV contains important provisions regarding the control of development in use of land included in a development plan. Sections 43, 44, 45, 46, 47, 49, 50 and 51 read thus:

> "**43. Restrictions on development of land**
>
> After the date on which the declaration of intention to prepare a Development plan for any area is published in the

Official Gazette or after the date on which a notification specifying any undeveloped area as a notified area, or any area designated as a site for a new town, is published in the *Official Gazette*, no person shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning Authority:

Provided that, no such permission shall be necessary—

(i) for carrying out works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance thereof except in case of heritage building or heritage precinct;

(ii) the carrying out of works in compliance with any order or direction made by any authority under any law for the time being in force;

(iii) the carrying out of works by any authority in exercise of its powers under any law for the time being in force;

(iv) for the carrying out by the Central or the State Government or any local authority of any works—

(a) required for the maintenance or improvement of a highway, road or public street, being works carried out on land within the boundaries of such highway, road or public street;

(b) for the purposes of inspecting, repairing or renewing any drains, sewers, mains, pipes, cable, telephone or other apparatus including the breaking open of any street or other land for that purpose;

(v) for the excavation (including wells) made in the ordinary course of agricultural operation;

(vi) for the construction of a road intended to give access to land solely for agricultural purposes;

(vii) for normal use of land which has been used temporarily for other purposes;

(viii) in case of land, normally used for one purpose and occasionally used for any other purpose, for the use of land for that other purpose on occasions;

(ix) for use, for any purpose incidental to the use of a building for human habitation of any other building or land attached to such building.

44. Application for permission for development

(1) Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed:

Provided that, save as otherwise provided in any law, or any rules, regulations or by-laws made under any law for the time being in force, no such permission shall be necessary for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board or the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976.

(2) Without prejudice to the provisions of sub-section (1) or any other provisions of this Act, any person intending to execute an Integrated Township Project on any land, may make an application to the State Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be an Integrated Township Project by notification in the *Official Gazette* or, reject the application.

45. Grant of refusal of permission.

(1) On receipt of an application under section 44 of the Planning Authority may, subject to the provisions of this Act, by order in writing—

(i) grant the permission, unconditionally;

(ii) grant the permission, subject to such general or special conditions as it may impose with the previous approval of the State Government; or

(iii) refuse the permission.

(2) Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form.

(3) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(4) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the

applicant within sixty days from the date of receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days:

Provided that, the development proposal, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force an the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act;

Provided further that, any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorised development for the purposes of sections 52 to 57.

(6) The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or development plans to the Collector concerned.

46. Provisions of Development plan to be considered before granting permission—

The Planning Authority in considering application for the permission shall have due regard to the provisions of any draft or final plan or proposal published by means of notice submitted or sanctioned under this Act:

Provided that, if the Development Control Regulations for an area over which a Planning Authority has been appointed or constituted, are yet to be sanctioned, then in considering application for permission referred to in sub-section (1), such Planning Authority shall have due regard to the provisions of the draft or sanctioned Regional plan, till the Development Control Regulations for such area are sanctioned:

Provided further that, if such area does not have draft or sanctioned Regional plan, then Development Control Regulations applicable to the area under any Planning Authority, as specified by the Government by a notification in the Official Gazette, shall apply till the Development Control Regulations for such area are sanctioned.

47. Appeal

(1) Any applicant aggrieved by an order granting permission on conditions or refusing permission under section 45 may, within forty days of the date of communication of the order to him, prefer an appeal to the State Government or to an office appointed by the State Government in this behalf, being an officer not below the rank of a Deputy Secretary to Government; and such appeal shall be made in such manner and accompanied by such fees (if any) as may be prescribed.

(2) The State Government or the officer so appointed may, after giving a reasonable opportunity to the appellate and the Planning Authority to be heard, by order dismiss the appeal, or allow the appeal by granting permission unconditionally or subject to the conditions as modified.

49. Obligation to acquire land on refusal of permission or on grant of permission in certain cases—

(1) Where—

(a) any land is designated by a plan as subject to compulsory acquisition, or

(b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

(d) any land for the development of which permission is refused or is granted subject to conditions,

and any owner of land referred to in clause (a), (b), (c) or (d) claims—

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) (where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or

(e) The owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at

which he might reasonably have been excepted to sell if it were not so designated or allocated,

the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as "the purchase notice") requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any, in respect of which the notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority an the Appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.

50. Deletion of reservation of designated land for interim draft of final Development plan—

(1) The Appropriate Authority other than the Planning Authority, if it is satisfied that the land is not or no longer required for the public purpose for which it is designated or reserved or allocated in the interim or the draft Development plan or plan for the area of Comprehensive development or the final Development plan, may request—

(a) the Planning Authority to sanction the deletion of such designation or reservation or allocation from the interim or the draft Development plan or plan for the area of Comprehensive development, or

(b) the State Government to sanction the deletion of such designation or reservation or allocation from the final Development plan.

(2) On receipt of such request from the Appropriate Authority, the Planning Authority, or as the case may be, the State Government may make an order sanctioning the deletion of such designation or reservation or allocation from the relevant plan:

Provided that, the Planning Authority, or as the case may be, the State Government may, before making any order, make such enquiry as it may consider necessary and satisfy itself that such reservation or designation or allocation is no longer necessary in the public interest.

(3) Upon an order under sub-section (2) being made, the land shall be deemed to be released from such designation, reservation, or, as the case may be, allocation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land, under the relevant plan.

51. Power of revocation and modification of permission to development—

(1) If it appears to a Planning Authority that it is expedient, having regard to the Development plan prepared or under preparation that any permission to develop land granted or deemed to be granted under this Act or any other law, should be revoked or modified, the Planning Authority may, after giving the person concerned an opportunity of being heard against such revocation or modification, by order, revoke or modify the permission to such extent as appears to it to be necessary:

Provided that—

(a) where the development relates to the carrying out of any building or other operation, no such order shall affect such of the operations as have been previously carried out; or shall be passed after these operations have substantially progressed or have been completed;

(b) where the development relates to a change of use of land, no such order shall be passed any at any time after the change has taken place.

(2) Where permission is revoked or modified by an order made under sub-section (1) and any owner claims within the time and in the manner prescribed, compensation for the expenditure incurred in carrying out the development in accordance with such permission which has been rendered abortive by the revocation or modification, the Planning Authority shall, after giving the owner reasonable opportunity of being heard by the Town Planning Officer, and after considering his report, assess and offer, subject to the provisions of section 19, such compensation to the owner as it thinks fit.

(3) If the owner does not accept the compensation and gives notice, within such time as may be prescribed, of his refusal to accept, the Planning Authority shall refer the matter for the adjudication of the court; and the decision of the court shall be final and be binding on the owner and the Planning Authority."

15. From this it is clear that it is entirely for the Planning Authority to decide whether or not to grant any particular development permission, and if decides to grant the permission

whether or not to attach any condition to it. That condition may be in the form of a reservation or a prior condition embedded in the development plan itself, and the permission may be made subject to the fulfilment of that condition. No development is authorised in contravention of such a conditional permission. If any owner believes that any land has become incapable of reasonably beneficial use or that the condition attached to the beneficial use is too onerous, or that the condition has resulted in the devaluation of the land, he may serve a notice under Section 49 requiring the Appropriate Authority to compulsorily purchase the interest in the land.

16. The scheme of Sections 49 and 50, read with Sections 126 and 127 was considered in detail in the recent Supreme Court decision in *Chhabildas v State of Maharashtra & Ors*.[1] A land owner subjected to an onerous condition bringing his case within Section 49(1)(d) has the option of serving of the State Government a purchase notice requiring the appropriate authority to purchase his interest in the land in accordance with the Act. The Petitioner has

1 (2018) 2 SCC 784.

admittedly served no such notice. Instead, what the Petitioner seeks is that the development plan, or more accurately the notification modifying the development plan to include the Ghorpadi lands subject to conditions, should be unilaterally modified for the sole benefit of the Petitioner. In short, the Petitioner is seeking an order from this Court in exercise of its jurisdiction under Article 226 of the Constitution of India compelling the deletion of the public purpose (viz., the 'amenity') reservation by modifying the development plan (under Section 50), or compelling the Planning Authority to delete the condition attached to the development permission (under Section 51).

17. It is not possible to accept any such submission. The fundamental flaw in the reasoning is the assumption that such planning is to benefit individuals. It is not. Development plans are intended to subserve a wider public interest. It is not possible to argue that in our cities there is ever any such thing as 'sufficient' open space or 'sufficient' amenity space. It may be true that roads and gardens are amenities but they are by no means the only types of

amenities. We do not accept the argument that because some land has been surrendered towards gardens or public roads, therefore the purposes of the development plan and the objective of planned and orderly development are fulfilled. The narrow interest of the individual land owner must yield to the larger public interest.

18. The Affidavit in Reply filed on behalf of the Pune Municipal Corporation correctly points out that the Petition is much delayed by at least 12 years during which time the Petitioner has enjoyed the conditional benefits of the 27th June 2000 notification including allowing a layout and the conversion from agricultural to residential user and zoning. There is also no explanation for this delay. It is also pointed out that the zoning itself determines the use of property included in a zone. The 10% amenity space in Plot No. 10 is very small. The development plan came into force on 5th February 1987 during which time and until 27th June 2000 it could only have been used for agricultural purposes. Thereafter it was possible for the Petitioner to use it for residential purposes and this brought to the Petitioner sizeable benefits because of the consequent increase in

land values. It is also pointed out that the Petitioner sold and subdivided plots after his lands were brought into the residential zone. Further, while providing for this plot-wise layout, the Petitioner himself provided for a separate plot i.e. Plot No.10 equivalent to exactly 10% of the amenity area. In other words, having obtained benefits by accepting the condition, the Petitioner now wants to make further profits by deleting that very condition. It is also pointed out that there is grave public prejudice caused as a result of this.

19. There is no substance to the arguments that this constitutes a compulsory acquisition. The reliance placed on the decision of the Supreme Court in *Pandit Chet Ram Vashist v Municipal Corporation of Delhi*[2] is wholly misplaced. In that case the provision was for vesting free of cost. In this case, in contradistinction, the vesting is not free of cost since the Petitioner stands to obtain the benefit of FSI in lieu of the surrender.

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2 (1995) 1 SCC 47.

20. Even leaving this aside we are entirely of the view that the 10% provision for amenity space is not only salutary but it is necessary for the balanced development of the city. It cannot be compromised.

21. In our view the Petition is without substance. It is dismissed. No costs.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)